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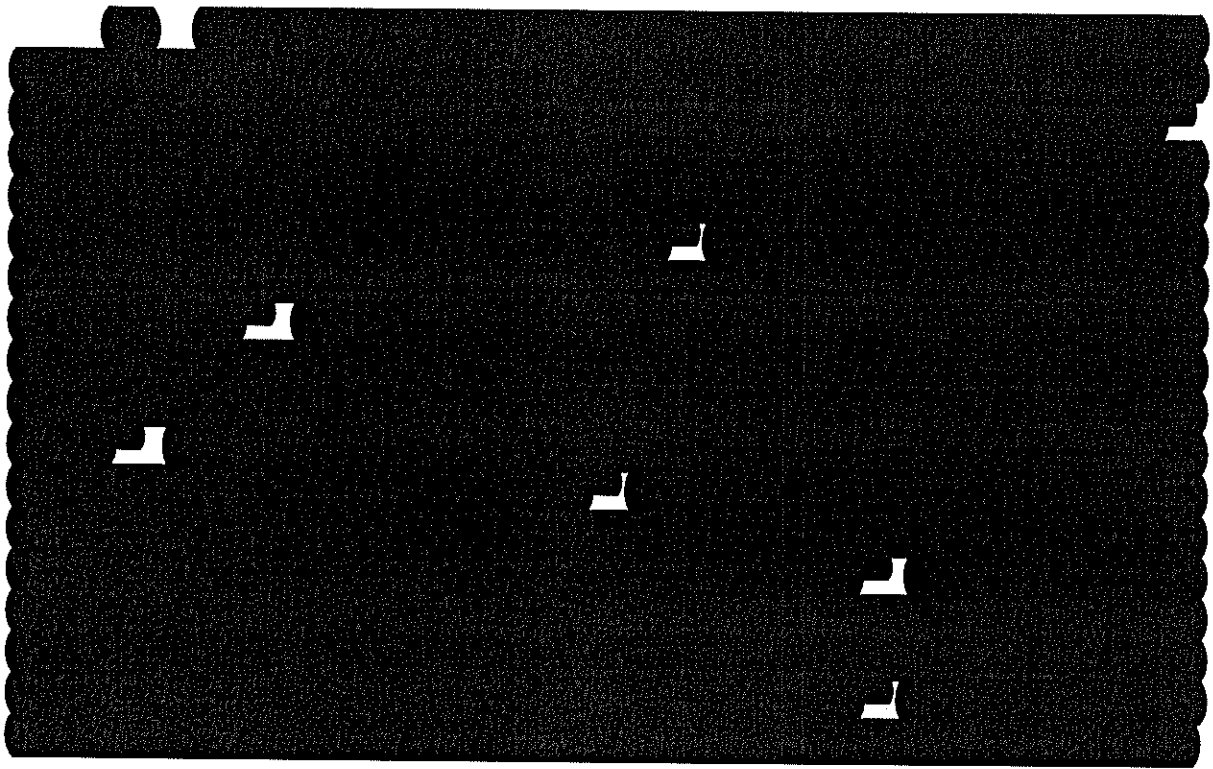
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## **STATEMENT OF PUBLICATIONS, PRIOR TRIAL AND DEPOSITION TESTIMONY, & COMPENSATION**

### **I. Publications**

My publications from the last 10 years are listed on my CV, which is attached as Exhibit A.

### **II. Trial and Deposition Testimony**

Within the past four years, I have provided deposition testimony in *Masimo v. Tyco* on October 2, 2006; *Rochester Medical Corporation v. C.R. Bard* on December 4-5, 2006 and May 31, 2007; *Louisiana Municipal Employees' Retirement System v. Crawford* on February 9, 2007; *Amgen v. F. Hoffman La Roche* on May 25, 2007; *NCAA v. White* on October 22, 2007; *Natchitoches Parish Hospital Service District v. Tyco* on March 11, 2008; *Daniels v. Tyco* on August 5, 2008; *Southeastern Milk Antitrust Litigation* on June 23, 2009; Tessler on September 22-23, 2009, and *In Re Marsh & McLennan Companies, Inc. Securities Litigation* on October 6, 2009.

Within the past four years, I have also testified at trial in *Applied Medical Resources v. Ethicon* on July 27-28, 2006, and August 22, 2006; in *Amgen v. F. Hoffman La Roche* on December 7, 2007, and in *Natchitoches Parish Hospital Service District v. Tyco* at a court hearing on January 8-9, 2009 and a trial on December 17, 2009. I also testified in the arbitration hearing in *BP America v. Repsol* on June 4, 2009. Other cases in which I have filed expert reports in the last four years are listed in my CV, which is attached as Exhibit A.

### **III. Compensation**

I am being compensated at a rate of \$950 per hour for my work on this case.



## EXHIBIT A

**Einer Richard Elhauge  
Harvard Law School  
1575 Massachusetts Ave.  
Cambridge, Ma 02138**

**Tel: (617) 496-0860  
Fax: (617) 496-0861**

**Hauser Hall 502  
elhauge@law.harvard.edu**

## EMPLOYMENT

**Petrie Professor of Law, Harvard University**

Subjects: Antitrust, Contracts, Health Law Policy, Statutory Interpretation.

Founding Director, Petrie-Flom Center for Health Law Policy, Biotechnology and Bioethics.

Chair, Obama Campaign's Antitrust Advisory Committee

Co-Chair, Obama Campaign's Blogs and Op-eds Committee

Member, Obama Campaign's Health Policy Advisory Committees.

Member, Advisory Board for the Journal of Competition Law & Economics.

Member, Advisory Board for the Social Sciences Research Network on Antitrust Law & Policy.

Member, Advisory Board for the Social Sciences Research Network on Telecommunications &  
Regulated Industries.

## Books

ELHAUGE, ED., THE FRAGMENTATION OF U.S. HEALTH CARE: CAUSES AND SOLUTIONS (Oxford University Press 2010).

ELHAUGE, U.S. ANTITRUST LAW & ECONOMICS (Foundation Press 2008).

ELHAUGE, STATUTORY DEFAULT RULES (Harvard University Press 2008).

ELHAUGE & GERADIN, GLOBAL ANTITRUST LAW & ECONOMICS (Foundation Press 2007).

ELHAUGE & GERADIN, GLOBAL ANTITRUST LAW & ECONOMICS (Supplement Foundation Press 2007).

ELHAUGE & GERADIN, GLOBAL COMPETITION LAW & ECONOMICS (Hart Publishing 2007).

AREEDA, ELHAUGE & HOVENKAMP, VOL X, ANTITRUST LAW (Little, Brown 1996).

ELHAUGE, CONTRACTUAL DEFAULT RULES (forthcoming Foundation Press).

ELHAUGE, ED., RESEARCH HANDBOOK ON THE ECONOMICS OF ANTITRUST LAW (forthcoming Edward Elgar Publishing Ltd.).

ELHAUGE, ED., RESEARCH HANDBOOK ON HEALTH LAW AND POLICY (forthcoming Edward Elgar Publishing Ltd.).

#### Academic Articles

Elhauge, *The Failed Resurrection of the Single Monopoly Profit Theory*, 6 COMPETITION POLICY INTERNATIONAL (forthcoming Spring 2010).

Elhauge & Wickelgren, *Robust Exclusion Through Loyalty Discounts*, Harvard Law School Discussion Paper No. 662 (Jan. 2010).

Elhauge, *Why the Google Books Settlement Is Procompetitive*, J. LEGAL ANALYSIS (forthcoming 2010), Harvard Law School Olin Center Discussion Paper 646 (Dec. 2009).

Elhauge, *Tying, Bundled Discounts, and the Death of the Single Monopoly Profit Theory*, 123 HARVARD LAW REVIEW 397 (2009).

Elhauge, *Framing the Antitrust Issues in the Google Books Settlement*, GLOBAL COMPETITION POL'Y, (October 2009 Release 2).

Elhauge, *How Loyalty Discounts Can Perversely Discourage Discounting*, 5 JOURNAL OF COMPETITION LAW & ECONOMICS 189 (2009)

Elhauge, *Disgorgement as an Antitrust Remedy*, 76 ANTITRUST LAW JOURNAL 79 (2009).

Elhauge, *Do Patent Holdup and Royalty Stacking Lead to Systematically Excessive Royalties?*, 4

- JOURNAL OF COMPETITION LAW & ECONOMICS 535 (2008)
- Elhauge, *How Should Competition Law Be Taught?*, 4 COMPETITION POLICY INTERNATIONAL 267 (Spring 2008)
- Elhauge, *Harvard, Not Chicago: Which Antitrust School Drives Recent Supreme Court Decisions?*, 3 COMPETITION POLICY INTERNATIONAL 59 (Autumn 2007)
- Elhauge, *Can Health Law Become a Coherent Field of Law?*, 41 WAKE FOREST L. REV. 365 (2006).
- Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. LAW REVIEW 733 (2005)
- Elhauge, *Corporate Manager's Operational Discretion to Sacrifice Corporate Profits in the Public Interest*, in ENVIRONMENTAL PROTECTION AND THE SOCIAL RESPONSIBILITY OF FIRMS 13-76 (Bruce Hay, Robert Stavins, & Richard Vietor eds., 2005)
- Elhauge, *Defining Better Monopolization Standards*, 56 STANFORD LAW REVIEW 253 (2003)
- Elhauge, *Why Above-Cost Price Cuts to Drive out Entrants Do Not Signal Predation or Even Market Power – and the Implications for Defining Costs*, 112 YALE LAW JOURNAL 681 (2003)
- Elhauge, *Preference-Estimating Statutory Default Rules*, 102 COLUMBIA LAW REVIEW 2027 (2002)
- Elhauge, *Preference-Eliciting Statutory Default Rules*, 102 COLUMBIA LAW REVIEW 2162 (2002)
- Elhauge, *The Lessons of Florida 2000*, 110 POLICY REVIEW 15 (Dec 2001 -Jan 2002).
- Elhauge, *What Term Limits Do That Ordinary Voting Cannot*, CATO POLICY ANALYSIS, No. 328 (Dec. 16, 1998), <http://www.cato.org/pubs/pas/pa-328es.html>.
- Elhauge, *Are Term Limits Undemocratic?*, 64 U. CHIC. L. REV. 83 (1997).
- Elhauge, Lott & Manning, *How Term Limits Enhance the Expression Of Democratic Preferences*, 5 SUPREME COURT ECON. REV. 59 (1997)
- Elhauge, *The Limited Regulatory Potential of Medical Technology Assessment*, 82 VA. L. REV. 1525 (1996).
- Elhauge, *Allocating Health Care Morally*, 82 CALIF. L. REV. 1449 (1994)

Elhauge, *Toward a European Sale of Control Doctrine*, 41 AM. J. COMP. LAW 627 (1993)

Bundy & Elhauge, *Knowledge About Legal Sanctions*, 92 MICH. L. REV. 261 (1993)

Elhauge, *The Triggering Function of Sale of Control Doctrine*, 59 U. CHIC. L. REV. 1465 (1992)

Elhauge, *Making Sense of Antitrust Petitioning Immunity*, 80 CALIF. L. REV. 1177 (1992)

Bundy & Elhauge, *Do Lawyers Improve the Adversary System? A General Theory of Litigation Advice and Its Regulation*, 79 CALIF. L. REV. 313 (1991)

Elhauge, *Does Interest Group Theory Justify More Intrusive Judicial Review?*, 101 YALE L.J. 31 (1991)

Elhauge, *The Scope of Antitrust Process*, 104 HARV. L. REV. 667 (1991)

#### Media Publications

"Coverage vs Coercion," The Huffington Post (March 3, 2008)

"Rewire This Circuit," The Wall Street Journal, A26 (Sept. 17, 2003)

"Soft on Microsoft," The Weekly Standard (March 25, 2002)

"Despite What the Critics Say, it Wasn't a Bag Job," Boston Globe (March 3, 2002)

"Florida 2000: Bush Wins Again!," Weekly Standard (November 26, 2001 )

"State Made The Right Call On Microsoft," The Hartford Courant (Nov. 9, 2001)

"States Should Seek More From Microsoft," San Francisco Chronicle (Nov. 6, 2001)

"A Smart Move on Microsoft," Boston Globe (Sept. 11, 2001)

"Competition Wins in Court," New York Times, (June 30, 2001)

"Bush v. Florida," New York Times, A31 (Nov. 20, 2000)

"Florida's Vote Wasn't 'Irregular,'" Wall Street Journal (Nov. 13, 2000)

"The New 'New Property'," San Francisco Chronicle (Nov. 6, 2000)

"The Real Problem with Independent Counsels," The Washington Times, A19 (Jun 30, 1999)

"Foul Smoke," The Washington Post, A15 (August 4, 1998)

"The Court Failed My Test," The Washington Times, A-19 (July 10, 1998)  
"Microsoft Gets an Undeserved Break," The New York Times, A21 (June 29, 1998)  
"Medi-Choice," The New Republic, 24 (November 13, 1995)  
"Term Limits: Voters Aren't Schizophrenic," Wall Street Journal, A-16 (March 14, 1995)

#### Harvard Committees

Chair, Harvard Law School Lateral Appointments Committee (1998-99), Member (2003-05).  
Member, Harvard University Standing Committee on the Degree of Doctor of Philosophy in Health Policy (1996-99, 2006-07).  
Member, Harvard University Internal Advisory Board for the Interfaculty Initiative in Health Policy (1996-99).  
Member, Harvard Law School Lecturers and Visitors Committee (1996-98).

#### **Past Academic Positions**

1988-95	Professor of Law, Boalt Hall, University of California at Berkeley
1995	Visiting Professor of Law, Univ. of Chicago Law School
1994	Visiting Professor of Law, Harvard Law School
1993	Visiting Olin Faculty Fellow, Yale Law School
1991-92	Visiting Scholar in Europe at the Karolinska Institute, the Centre for Health Economics, the Rockefeller Foundation Study Center, Cambridge University, the European University Institute and the University of Florence

#### **Clerkships**

1987-88	Clerk for Justice William J. Brennan, Jr., United States Supreme Court
1986-87	Clerk for Judge William A. Norris, U.S. Court of Appeals for the Ninth Circuit

1986

Clerk for U.S. Solicitor General's Office, Washington, D.C.

**Bar Admissions:** Massachusetts (2000); Pennsylvania (1986); United States Courts of Appeals for the Fourth (1997), Sixth (2008), and Ninth Circuits (1987); Supreme Court of the United States (1997).

### **ECONOMICS EXPERT WORK**

President, Legal Economics LLC, 2007 to present.

Senior Expert at Criterion Economics LLC, 2004-2007

Named One of World's Leading Competition Economists in the 2009 edition of the *International Who's Who of Competition Lawyers and Economists*.

Testifying Expert in *In re Marsh & McLennan Companies, Inc. Securities Litigation*, a case alleging securities violations from failure to disclose bid steering.

Testifying Expert in *Tessera Technologies v. Hynix Semiconductor*, a case alleging conspiracy to exclude outside technologies from semiconductor markets.

Testifying Expert in *American Steel Erectors v. Local Union No. 7*, a case alleging boycott claims related to steel erection and labor markets.

Testifying Expert in *BP America v. Repsol*, an arbitration.

Testifying Expert in *Food Lion v. Dean Foods Company*, a class action alleging conspiracies to restrict and foreclose competition in milk markets.

Testifying Expert in *Eisai Inc. v. Sanofi-Aventis U.S. LLC*, a case by a rival alleging foreclosure in anticoagulant pharmaceutical markets.

Testifying Expert in *Daniels v. Tyco*, a case by a rival alleging foreclosure from sharps containers and GPO markets.

Testifying Expert in *Natchitoches Parish Hospital v. Tyco*, a class action concerning sharps



containers and GPO markets.

Testifying Expert in *Amgen v. F. Hoffman La Roche*, concerning erythropoietin-simulating agents (ESAs) and white blood cell simulators (WBCs) pharmaceutical markets.

Testifying Expert in *White v. NCAA*, concerning markets for athletic and educational services.

Testifying Expert in *Applied Medical Resources v. Ethicon, Inc.*, concerning sutures, trocars, and GPO markets.

Testifying Expert in *Masimo Corp. v. Tyco Health Care Group*, concerning oximetry products and GPO markets.

Testifying Expert in *Rochester Medical v. Bard*, concerning catheter and GPO markets.

Testifying Expert in *Retractable Technologies, Inc. v. Becton Dickinson*, concerning syringes and GPO markets.

Testifying Expert in *Spartanburg v. Hill-Rom*, a class action concerning hospital beds and GPO markets.

Testifying Expert in *Mountain Area Realty v. Wintergreen Partners*, concerning conduct in the real estate brokerage services market.

Testifying Expert in *Louisiana Municipal Police Employees' Retirement System v. Crawford*, concerning merger in the pharmacy benefit manager market.

Testifying Expert in *Capital Credit Alliance v. National Automated Clearing House Association*, concerning electronic checks market.

Testifying Expert for Intel before EC and Korean antitrust authorities on microprocessor markets.

Testifying Expert for AmBev before the EC and Brazilian antitrust authorities on beer market.

Testifying Expert for 1-800-Contacts before the FTC on OSI-CooperVision merger and agreements restraining distribution by nonprescribing retailers.

Testifying Expert in *In Re Cardizem CD Antitrust Litigation*, concerning patents and pharmaceuticals.

Testifying Expert regarding the *B.F. Goodrich-Coltec* Merger, concerning the aerospace industry.

Testifying Expert regarding the *Alcoa-Reynolds* Merger, concerning the aluminum industry

Expert Consultant to National Cable Television Association on Internet Access Bills before Congress and Interactive Television Inquiry before FCC.

Expert for Royal Caribbean for proposed mergers of Princess with Royal Caribbean and Carnival, concerning the cruise industry.

Expert for the Medical Device Manufacturers Association, producing Report to U.S. Senate and Statement to FTC/DOJ regarding exclusionary agreements between medical device suppliers and Group Purchasing Organizations and their hospitals.

#### **MIXED LEGAL/ECONOMIC WORK**

FTC Special Employee on Antitrust Issues.

Expert on Antitrust and Statutory Interpretation testifying before the New Jersey legislature testifying for Yankees Entertainment & Sports Network, LLC, regarding cable access legislation.

Confidential Consultant for various clients on issues of antitrust law or economics involving many industries, including: advertising, airlines, air cargo, aircraft repair, agriculture, armor, automobiles, beer, cigarettes, computers, contact lenses, electronic commerce, food, express mail, financial markets, hospitals, hotels, insurance (health and auto), Internet software and technology, medical services, metals, petfood, pharmaceuticals, podiatry, real estate brokerage services, retail, telecommunications, television, ticket brokering, vacation packages, and wireless telephony.

## EDUCATION

### Harvard Law School

J.D., June 1986

#### *Awards*

Fay Diploma -- for graduating first in class

Sears Prize -- Second Year -- to top two students in class

Sears Prize -- First Year -- to top two students in class

#### *Activities*

Harvard Law Review, Articles Office Co-Chair

Class Marshal

Author: *Modes of Analysis: The Theories and Justifications of Privileged Communications*,  
98 HARV. L. REV. 1471-1500 (1985).

### Harvard College

B.A., June 1982

Graduated in three years, majoring in Biochemical Sciences. GPA 3.9

## PERSONAL

Born of Argentinian immigrants in New York City. First language was Spanish. Live with wife and 3 children in Newton, Massachusetts.

## STATEMENT OF DOCUMENTS RELIED UPON

### Pleadings

Amended Complaint

Defs' Mem. In Support of Summary Judgement

### Responses to Interrogatories

DAIRY FARMERS OF AMERICA, INC.'S OBJECTIONS AND AMENDED RESPONSES TO INTERROGATORIES 1-4, AND 6-10 OF DAIRY FARMER PLAINTIFFS' SECOND SET OF INTERROGATORIES TO DEFENDANT DAIRY FARMERS OF AMERICA

### Expert Reports

Expert Declaration of Professor Einer Elhauge in Support of Opposition to Summary Judgment, Case No. 2:07-CV-188

### Books

IIB AREEDA, HOVENKAMP & SOLOW, ANTITRUST LAW (3d ed. 2007)

IV AREEDA, HOVENKAMP & SOLOW, ANTITRUST LAW (2nd ed. 2005)

CARLTON & PERLOFF, MODERN INDUSTRIAL ORGANIZATION, 107-08 (4<sup>th</sup> ed., 2005)

ELHAUGE, U.S. ANTITRUST LAW & ECONOMICS 199-216 (Foundation Press 2008)

ELHAUGE & GERADIN, GLOBAL ANTITRUST LAW AND ECONOMICS, 1012-1013 (2007)

HOVENKAMP, FEDERAL ANTITRUST POLICY §1.2b (1994).

HOVENKAMP, FEDERAL ANTITRUST POLICY 421 (2d ed. 1999)

XI HERBERT HOVENKAMP, ANTITRUST LAW 94-95 (1998)

XIII HOVENKAMP, ANTITRUST LAW 252, 272-273 (2d ed. 2005)

### Articles

Bernard & Bernard, *What Is it About Organic Milk?: An Experimental Analysis*, 91 AMER. J. AGR. ECON. 826, 826-836 (2009)

Dhar & Foltz, *Milk by Any Other Name ... Consumer Benefits from Labeled Milk*, 87 AMER. J. AGR. ECON. 214, 224-25 (2005)

Einer Elhauge, *Defining Better Monopolization Standards*, 56 STANFORD L. REV. 253, 288-92 (2003).

Einer Elhauge, *Tying, Bundled Discounts, and the Death of the Single Monopoly Profit Theory*, 123 HARV. L. REV. 397, 413-17 (2009).

Erba et. al, *An Analysis of Processing and Distribution Productivity and Costs in 35 Fluid Milk Plants*, Cornell Program on Dairy Markets and Policy 28-29, 31 (1997)

David S. Evans & Richard Schmalensee, *A Guide to the Antitrust Economics of Networks*, ANTITRUST, Spring 1996

Elizabeth Granitz & Benjamin Klein, *Monopolization by "Raising Rivals' Costs": The Standard Oil Case*, 39 J. L. & ECON. 1 (1996)

James E. Hodder & Yael A. Ilan, *Declining Prices and Optimality When Costs Follow an Experience Curve*, 7 MANAGERIAL & DECISION ECON. 229 (1986)

Herbert Hovenkamp, *Mergers and Buyers*, 77 VA. L. REV. 1369 (1991)  
 Ed Jesse and Bob Cropp, *Basic Milk Pricing Concepts for Dairy Farmers*, UNIV. WISC. - EXTENSION, Jan. 2004  
 S.J. Liebowitz & Steve Margolis, *Network Effects and Externalities*, in THE NEW PALGRAVE'S DICTIONARY OF ECONOMICS AND THE LAW 671 (1998).  
 Michael L. Katz & Carl Shapiro, *Systems Competition and Network Effects*, 8 J. ECON. PERSP. 93 (1994)  
 Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price*, 96 YALE L. J. 209, 238-40 (1986)  
 Stephen C. Salop & David T. Scheffman, *Raising Rivals' Costs*, 73 AM. ECON. REV. 267 (1983) (Special Issue)  
 Siebert et al., *Suiza Foods Corporation: Best Management Strategy in the Fluid Milk Industry*, 3 INT'L. FOOD & AGRIBUSINESS MGM'T REVIEW 445 (2000).  
 A. Michael Spence, *The Learning Curve and Competition*, 12 BELL J. ECON. 49 (1981)

### **Depositions**

Deposition of Donald Ault, June 26, 2009  
 Deposition of Patrick Ray Beamen, Aug. 5, 2009  
 Deposition of Cletes O. Beshears, April 21, 2009  
 Deposition of Gary Bos, Vol. 1, Sept. 6, 2001  
 Deposition of Gary Bos, Vol. 3, Sept. 30, 2009  
 Deposition of Newton D. Brookshire III, Vol. 1, Aug. 1, 2005  
 Deposition of Newton D. Brookshire III, Vol. 2, Sept. 18, 2009  
 Deposition of Jay Stanley Bryant, Vol. 1, May 13, 2003  
 Deposition of Jay Stanley Bryant, Vol. 2, Apr. 4, 2005  
 Deposition of Jay Stanley Bryant, Vol. 3, Apr. 17, 2009  
 Deposition of Jay Stanley Bryant, Vol. 4, Nov. 30, 2009  
 Deposition of Willie Erwin Burt, Aug. 13, 2009  
 Deposition of John Collins, Vol. 1 July 21, 2006  
 Deposition of John Collins, Vol. 2, July 30, 2009  
 Deposition of Gary Corbett, Oct. 30, 2009  
 Deposition of Robert Cort, July 30, 2009  
 Deposition of Robert J. Cottet, Sept. 24, 2009  
 Deposition of Calvin Covington, Vol. 2, Dec. 5, 2009  
 Deposition of Marty Devine, Vol. 3, Oct. 13, 2009  
 Deposition of Marty Devine, Vol. 4, Feb. 25, 2010  
 Deposition of Gregg Engles, Nov. 16, 2009  
 Deposition of Sonia Fabian, Apr. 10, 2009  
 Deposition of Rick Fehr, Vol. 2, Sept. 2, 2009  
 Deposition of Rick Fehr, Vol. 4, Jan. 14, 2010  
 Deposition of Betty Gist, Vol. 2, May 14, 2009  
 Deposition of Gary Hanman, Vol. 1, Aug. 29, 2001  
 Deposition of Gary Hanman, Vol. 3, July 16, 2002  
 Deposition of Gary Hanman, Vol. 4, Dec. 12, 2003

Deposition of Gary Hanman, Vol. 5, Oct. 6, 2009  
Deposition of Brian Haugh, Aug. 25, 2009  
Deposition of Elvin Hollon, Apr. 15, 2009  
Deposition of Byron Meredith, Dec. 28, 2009  
Deposition of Allen A. Meyer, Vol. 3, June 30, 2005  
Deposition of Allen A. Meyer, Vol. 4, Aug. 4, 2009  
Deposition of Tracy L. Noll, Vol. 1, July 27, 2001  
Deposition of Tracy L. Noll, Vol. 2, Apr. 24, 2009  
Deposition of Kent Poplin, June 24, 2009  
Deposition of Pete Schenkel, Vol. 1, Aug. 14, 2001  
Deposition of Pete Schenkel, Vol. 2, June 30, 2005  
Deposition of Sidney Schepps, June 19, 2009  
Deposition of Jeff Sims, Vol. 1, Jan. 28, 2009  
Deposition of Richard P. Smith, Oct. 29, 2009  
Deposition of Kathy Turner, Vol. 3, Sept. 22, 2009  
Deposition of Kathy Turner, Vol. 4, Jan. 12, 2010  
Deposition of John Wilson, Sept. 16, 2009  
Deposition of Ernest Walton Yates, Oct. 30, 2009

**Bates Numbered Documents**

AULT-000006  
AULT-0000028

DCMA008315-DCMA008326

DEAN00000759-DEAN00000768  
DEAN00000769-DEAN00000770  
DEAN00000786-DEAN00000806  
DEAN00002857  
DEAN00002865-DEAN00002866

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DEAN00069486-DEAN00069734  
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DEAN00789374-DEAN00789375  
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DFA01-1264211-DFA01-1264212  
DFA01-1264636-DFA01-1264639  
DFA01-1281694-DFA01-1281717  
DFA01-1287661-DFA01-1287664  
DFA01-1349352-DFA01-1349355  
DFA01-1391592-DFA01-1391601  
DFA20050116481-DFA20050116518

DMS01-0000190-DMS01-0000248  
DMS01-0069491  
DMS01-0224519-DMS01-0224520

EY04-005570-EY04-005571

FL00007384-FLP00007385

FLP-000007252

MDVA001485.0001-MDVA001485.0003

NDH00015860-NDH00015876  
NDH00020533-NDH00020545  
NDH00055418-NDH00055420  
NDH00138624

NDH00248781  
NDH00250992-NDH00250997  
NDHE-00002329.  
NDHe00012079-NDHe00012080  
NDHe00013907  
NDHe00006714  
NDHe00080073-NDHe00080075  
NDHe00085619-NDHe00085620  
NDHE00116050

SMA0165941-SMA0166033  
SMA-0024550-SMA\_0024571  
SMA\_0037953-SMA\_0037963  
SMA\_0145159-SMA

SMI0004723-SMI0004727

**Data**

2010.03.04 Milk data.csv  
distribution plant master file.xls  
Raw milk cost\_5\_7.xls  
matched facilities.csv  
USDA's Agricultural Marketing Service's List of Regulated Milk Plants:  
FMOPlantMaster\_02.xls,  
FMOPlantMstr\_03.xls,  
FMOPlantMstr\_04.xls,  
FMOPlantMstr\_05.xls,  
FMOPlantMstr\_06.xls,  
FMOPlantMstr\_07.xls,  
FMOPlantMstr\_08.xls,  
FMOPlantMstr\_09.xls

**Other**

Roger Cryan, U.S. Dairy, *A Local Affair: Comparing Fluid Milk Markets*  
Dhar & Flotz, *Is Soy Milk? The Economics of the Soy Milk Market* (June 15, 2005)  
Einer R. Elhauge, *Antitrust Analysis of GPO Exclusionary Agreements*, Comments Regarding Hearings on Health Care and Competition Law and Policy: Statement for DOJ-FTC Hearing on G P O s ( S e p t . 2 6 , 2 0 0 3 ) , a v a i l a b l e a t [http://www.law.harvard.edu/faculty/elhauge/pdf/statement\\_ftcdoj.pdf](http://www.law.harvard.edu/faculty/elhauge/pdf/statement_ftcdoj.pdf)  
Manchester & Blaynet, *Milk Pricing in the United States*, U.S. Department of Agriculture, Agriculture Information Bulletin No. 761  
U.S. Department of Agriculture, *In re: Milk in the Appalachian and Southeast Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders*  
U.S. DOJ/FTC Antitrust Guidelines for Collaborations Among Competitors §3.2 (2000)  
U.S. Dept. of Justice and Federal Trade Commission, Horizontal Merger Guidelines §§1.11, 1.21, 1.52 (revised Apr. 8, 1997) [hereinafter Merger Guidelines].

U.S. Dept. of Justice and Federal Trade Commission, Commentary on the Horizontal Merger Guidelines (2006)

U.S. Dept. Of Justice Antitrust Division Policy Guide to Merger Remedies (Oct. 2004)

UNITED STATES GENERAL ACCOUNTING OFFICE, DAIRY INDUSTRY: INFORMATION ON MILK PRICES AND CHANGING MARKET STRUCTURE (June 2001)

UNITED STATES GENERAL ACCOUNTING OFFICE, DAIRY INDUSTRY: INFORMATION ON MILK PRICES AND CHANGING MARKET STRUCTURE (June 2004)

Figure 1: Average Prices of Bottled Milk and Raw Milk in Orders 5 and 7

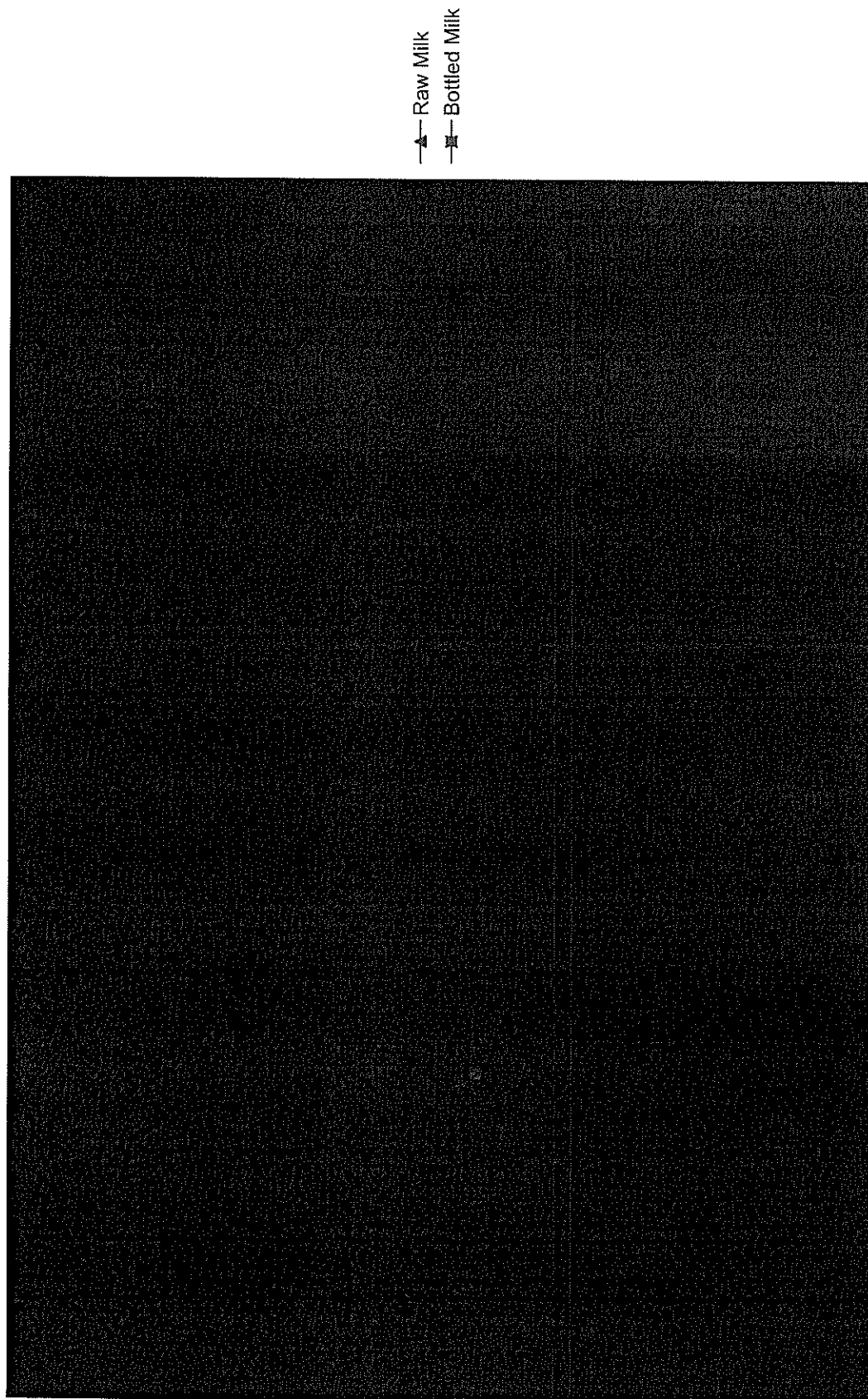
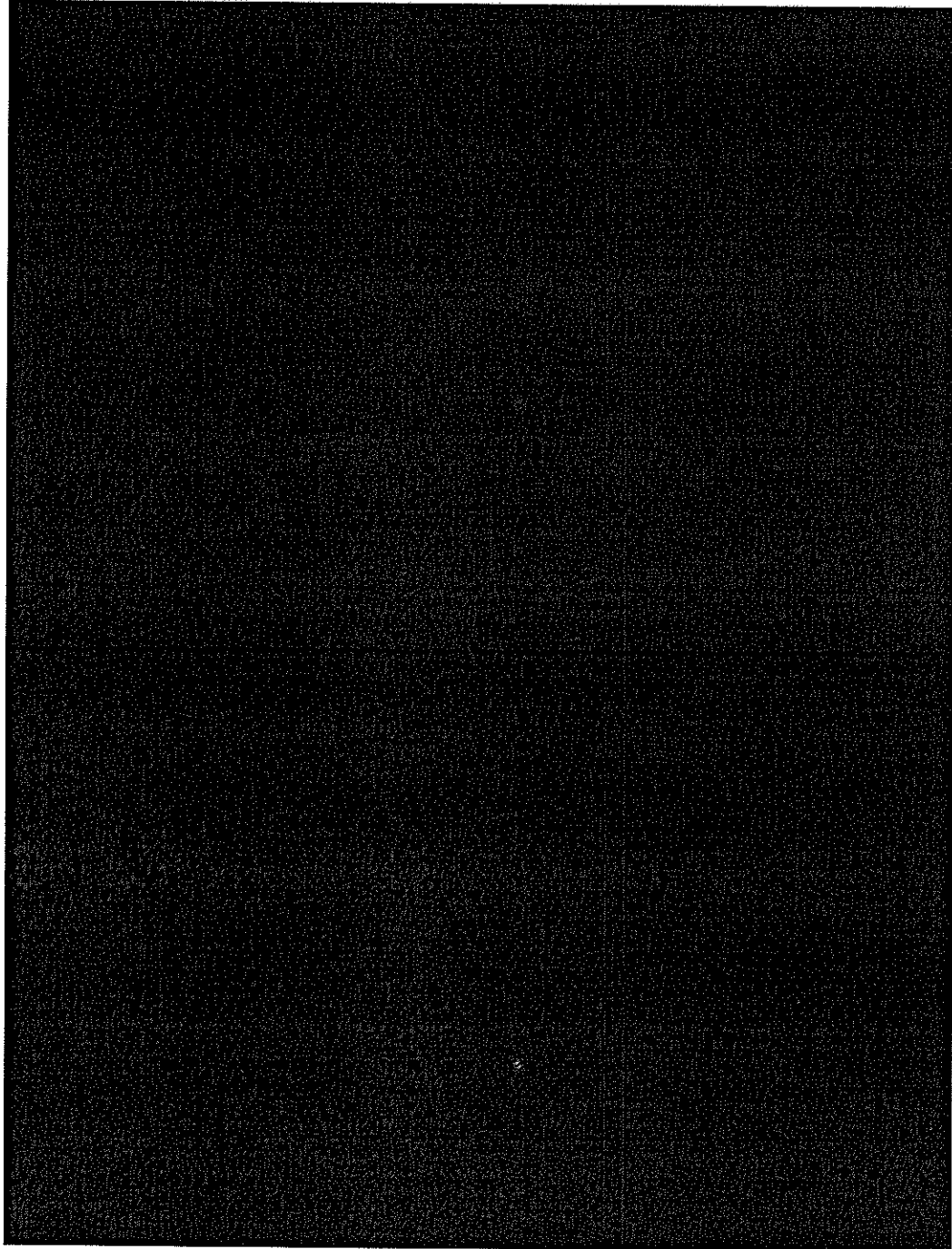
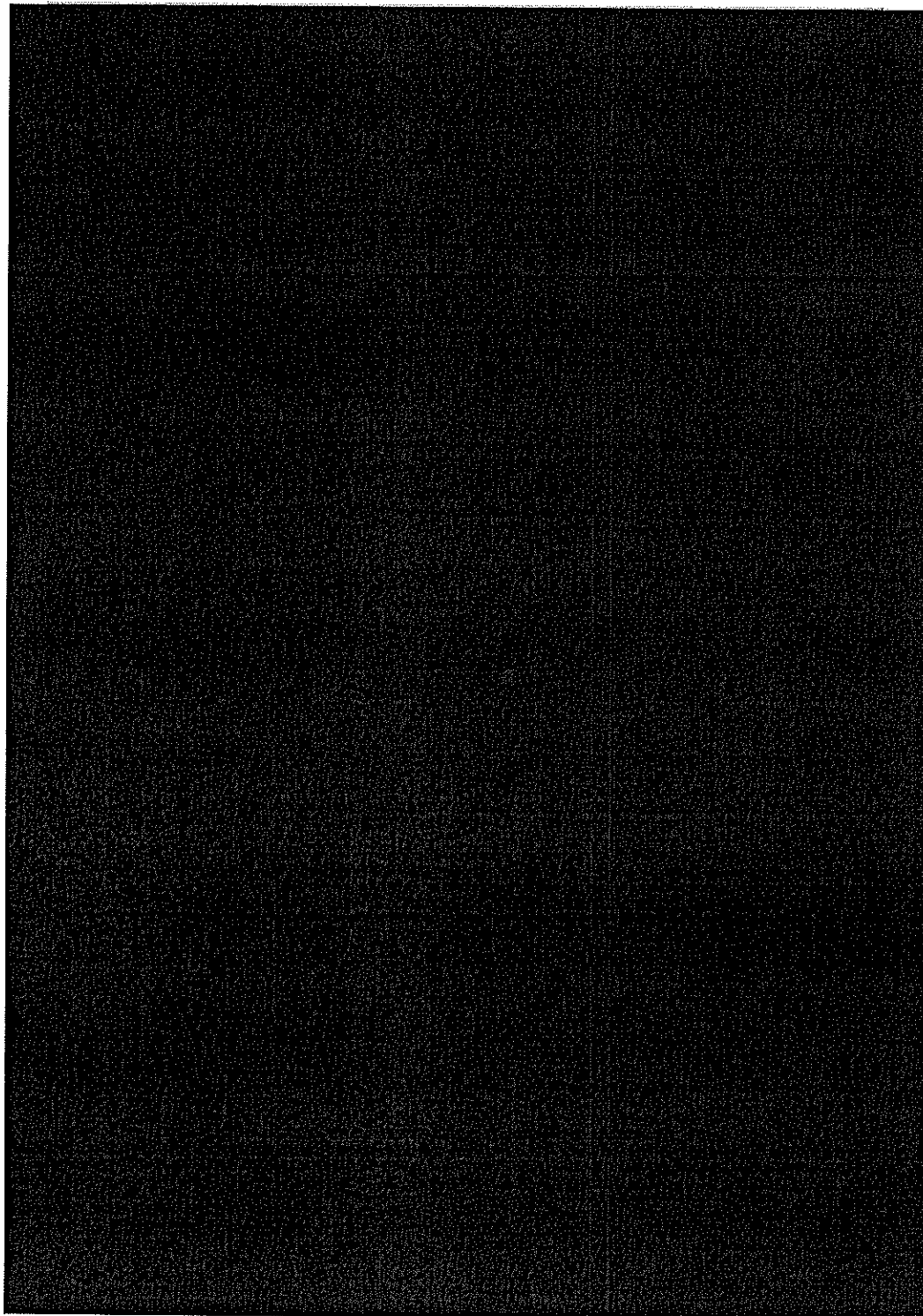


Figure 2: Raw Milk Prices



—■— Over-Order Premium

Figure 3: Aggregate Difference between Bottled Milk Prices and Raw Milk Prices

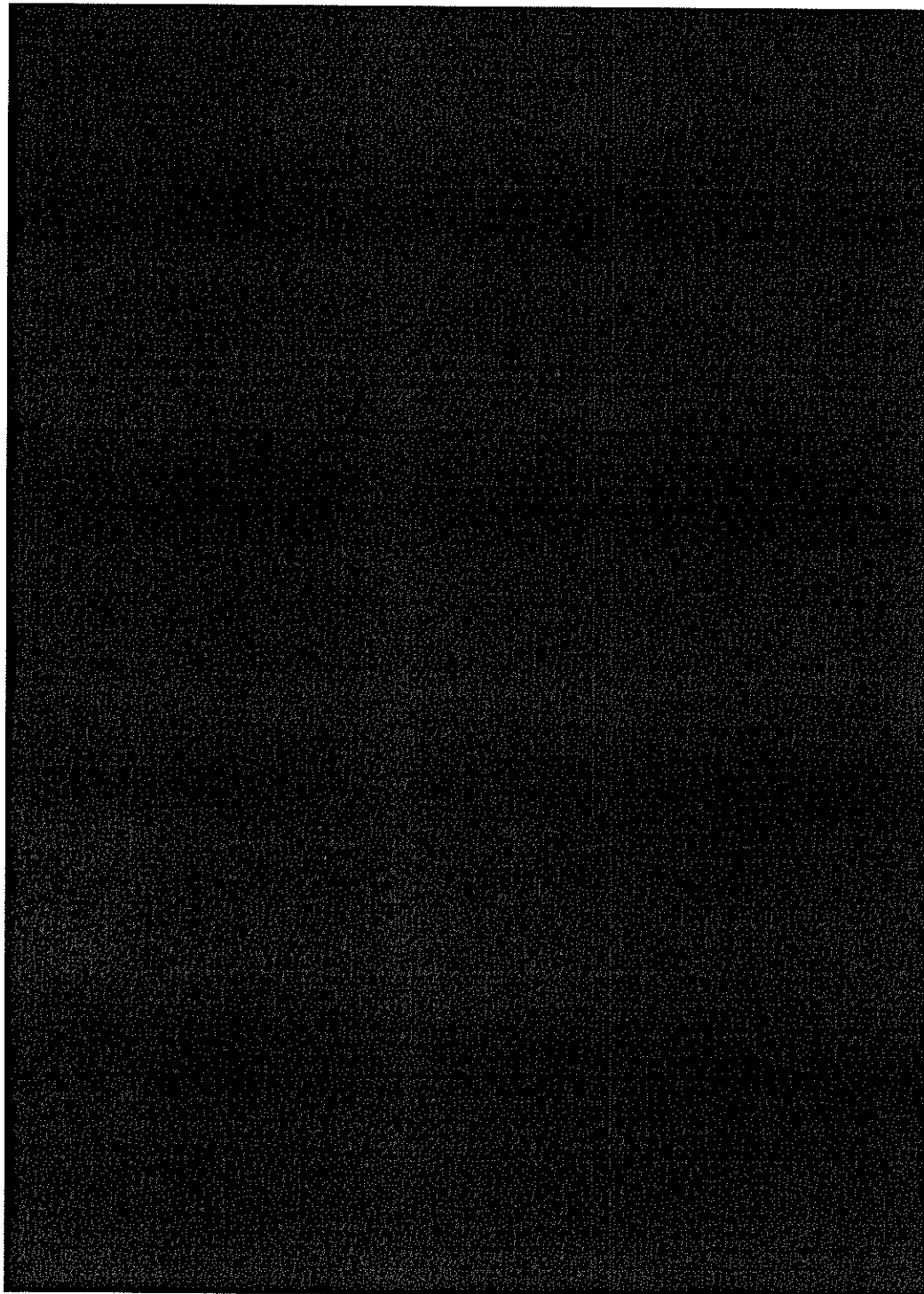


— difference

Source: Dean  
and NDH Sales  
Data, Raw Milk  
cost\_5\_7.xls



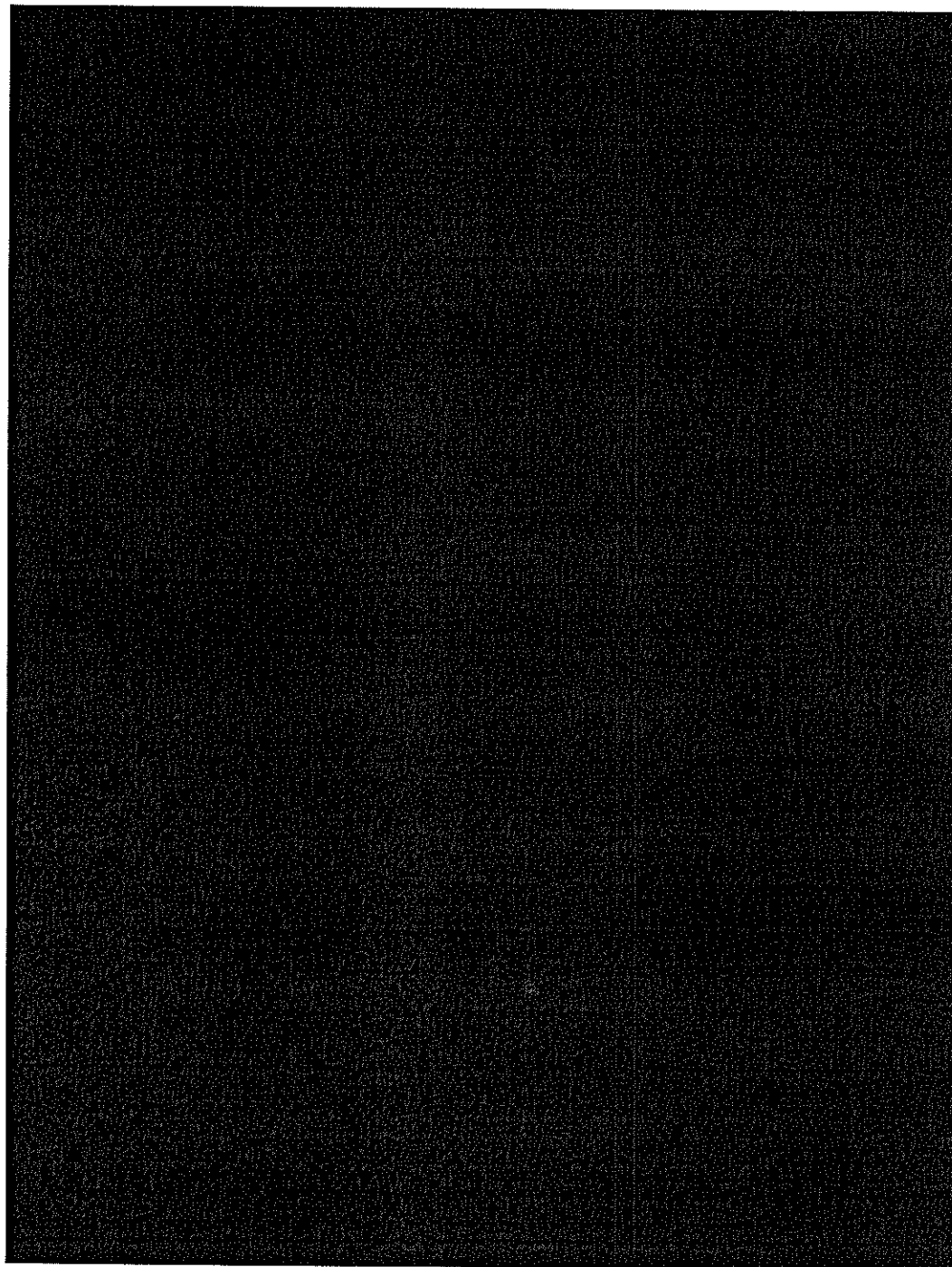
Figure 4: Dean's Net Operating Margin in the Southeast for Fluid Milk



—◆— net margin

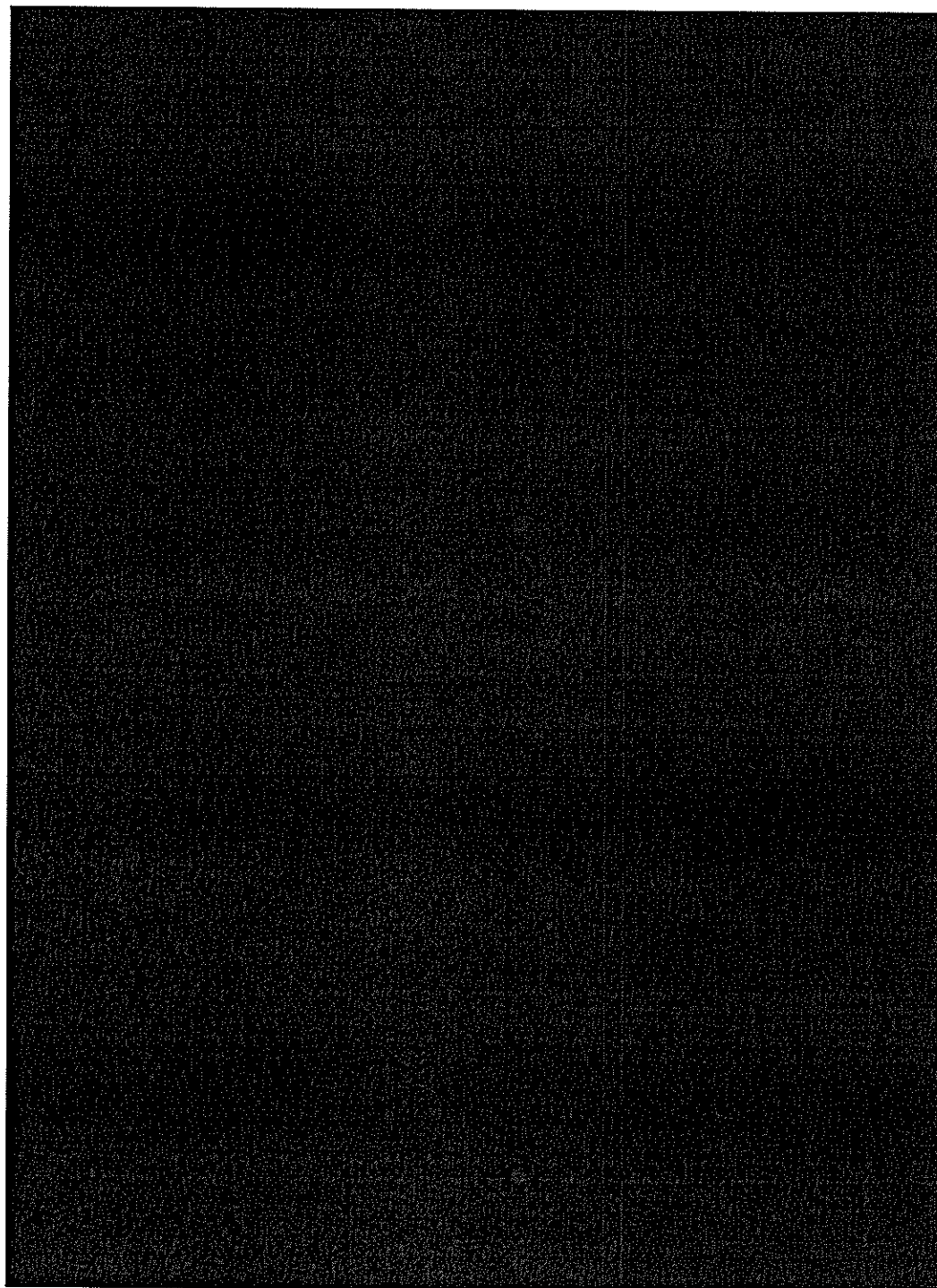
Source:  
DEAN00113915,  
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DEAN00068657,  
DEAN00069486,  
DEAN00773634,  
DEAN00730822,  
DEAN00811540.

Figure 5: Average distance for Dean plants to the closest NDH or DFA plant



— distance from a  
Dean plant

Figure 6: Average (mean) distance to the closest rival plant



— for a Dean plant  
— for a NDH plant

Figure 7: Locations of Dean, NDH, and DFA plants in January 2002

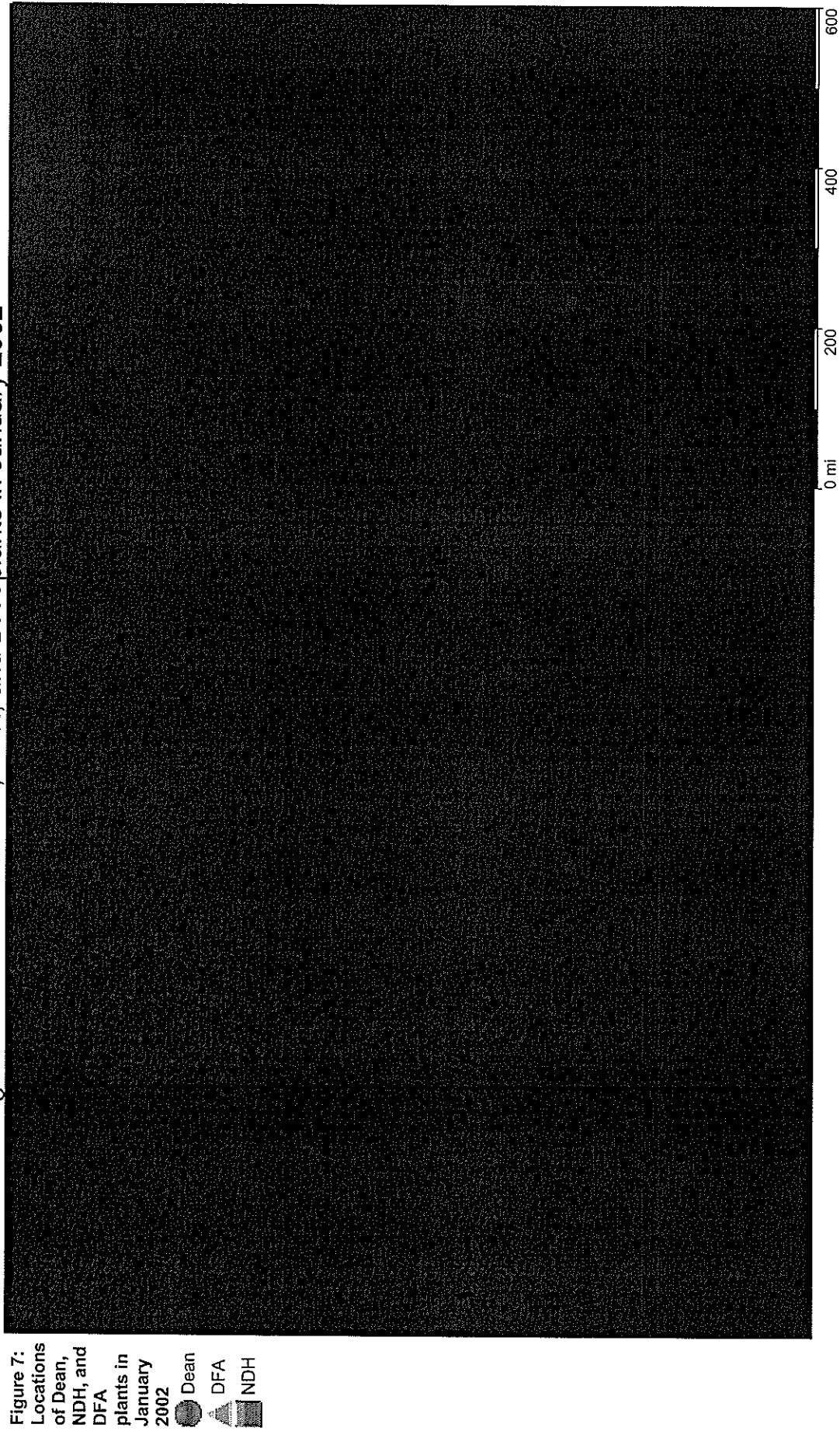
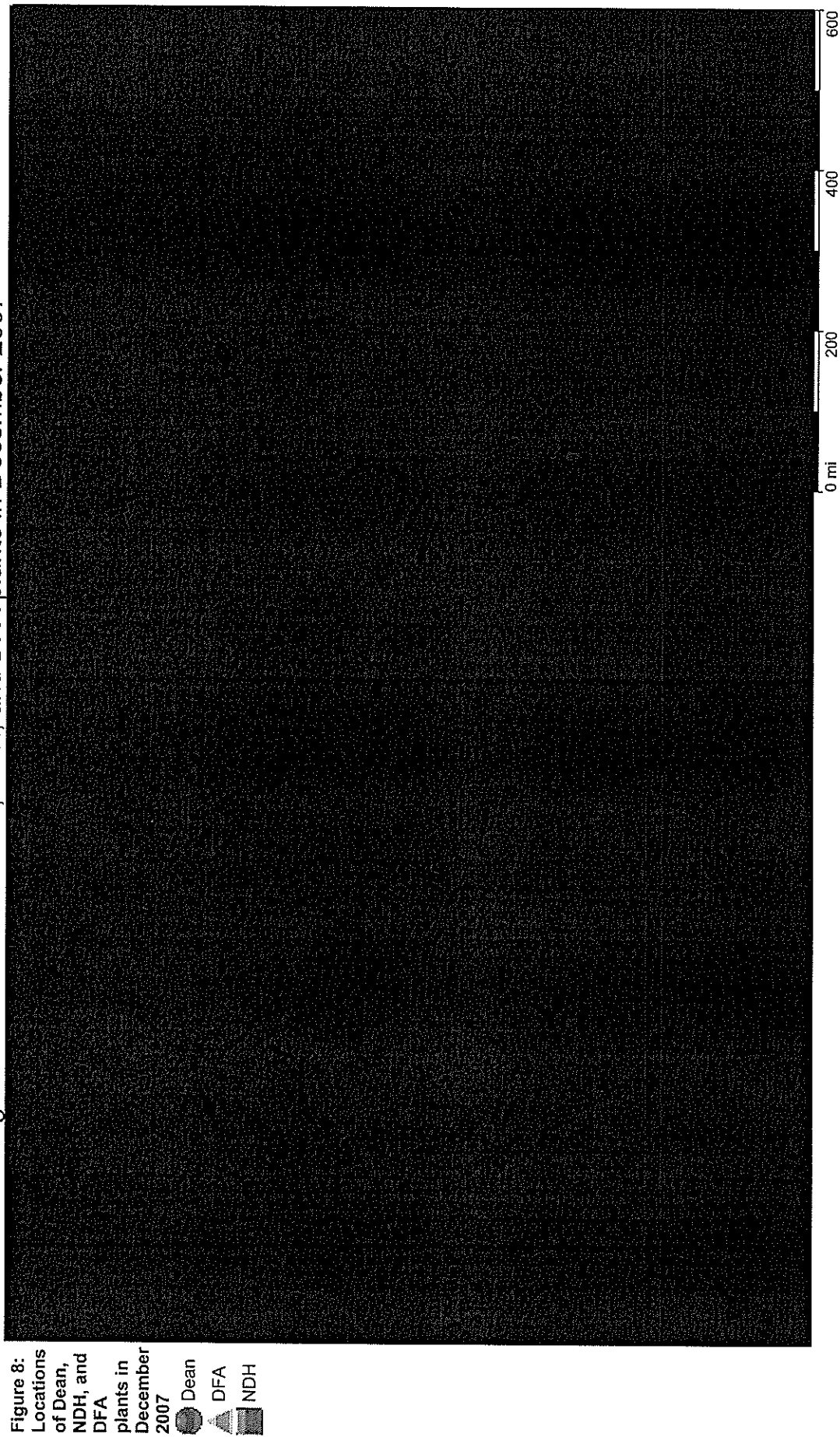


Figure 7:  
Locations  
of Dean,  
NDH, and  
DFA  
plants in  
January  
2002



Figure 8: Locations of Dean, NDH, and DFA plants in December 2007



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